

N.C. high court rules Phase II must be paid
KENTUCKY DUE \$124 MILLION IN TOBACCO MONEY
By Janet Patton
HERALD-LEADER BUSINESS WRITER

North Carolina's high court handed Kentucky and other tobacco-growing states a windfall yesterday.

The North Carolina Supreme Court overturned a lower court ruling that had allowed cigarette makers to skip more than \$424 million in payments to tobacco growers and quota holders.

Michael Plumley of the Kentucky Attorney General's office said it is unlikely cigarette makers can appeal the case to the U.S. Supreme Court.

"I think it came out the right way," said Plumley, who hasn't heard from the tobacco companies since the ruling.

State officials and farm leaders, many of whom fought for the ruling, were ecstatic at the news.

"The big thing is -- we won," said Keith Rogers, executive director of the Governor's Office of Agricultural Policy. "We've felt we were right all along, and that the farmers were owed this money by the tobacco companies."

Gov. Ernie Fletcher said in a press release: "We are excited to see the Supreme Court ruled in favor of our farmers. It was clearly the intent of the Congress to keep the Phase II program in place for 2004 when they passed the buyout last year."

An attorney representing the four cigarette makers involved in the deal -- Philip Morris USA, R.J. Reynolds Tobacco, Lorillard Tobacco and Brown & Williamson -- did not return calls seeking comment. A spokes-man for R.J. Reynolds declined to comment on the company's next step.

For 13 states, yesterday's ruling will likely mean about \$300 million in payments directly to farmers from the Phase II growers' trust.

But Kentucky is unique. Faced with farmers who would have lost \$124 million in payments, lawmakers agreed during the spring legislative session to give them \$114 million, and the Burley Tobacco Growers Cooperative agreed to make up the \$10 million difference.

Those payments went out this summer to 164,000 growers and quota holders, who waived rights to payments if the ruling was reversed.

To make those payments, the state had to rob another pot of tobacco money set aside for farmers: \$27

million was appropriated directly from the Agricultural Development Fund -- known as Phase I -- which had been receiving half of Kentucky's annual settlement from cigarette makers.

The rest of the payment -- \$87 million -- was raised by selling bonds that would be paid off through the year 2025 by the Agricultural Development Fund. Including the interest on those bonds, this summer's payments to farmers would have eventually cost the state \$211 million.

It's unclear what yesterday's ruling could mean for those bond payments. If the state can repay the borrowed money immediately, it could save \$100 million or so in interest.

Kentucky Farm Bureau President Sam Moore said he thinks the Agricultural Development Fund will get the money back.

"It's a good day for Kentucky agriculture," Moore said yesterday. "It's my understanding that the first money that comes back will go to retire those bonds."

Some interest will have to be paid, but the rest will go to the Phase I fund, Moore said.

Moore, who sits on the Agricultural Development Board, said the case was important for the long-term operation of the Phase I program and its goal of diversifying and developing Kentucky agriculture.

Paying off the \$211 million "was going leave some money for the ag development effort, but it would have taken a goodly portion to service the bonds," Moore said.

Attorney General Greg Stumbo said, in a press release, "I am very proud of this court victory by my office. The interest and penalties will increase the overdue payments to at least \$124 million, which is \$10 million more than the Kentucky General Assembly distributed to farmers. This is money that Kentucky sorely needs."

The burley co-op won't be getting its \$10 million back, said Daniel Green, co-op spokesman, but that was part of the deal. As a result, he said, "there should be additional funds to be paid out to tobacco quota holders and growers in Kentucky."

"The best news is for the Phase I fund, which is currently funding the Phase II initiative that was taken this year," Green said.

According to a press release from the governor's office, more than 2,100 projects have been approved since the inception of Phase I in January 2001, investing more than \$182 million in county, regional, and state projects "designed to increase net farm income and create sustainable new farm-based business enterprises."

Yesterday's case arose after Congress passed a \$10 billion buyout of the federal tobacco quota program last year. That buyout will be paid for by cigarette makers, who had created the 12-year, \$5.15 billion Phase II trust fund just for growers after the 1998 master settlement agreement with 46 states of \$206 billion.

Cigarette makers contended that the buyout killed all future Phase II payments, beginning with those in 2004. Tobacco growers argued that Phase II payments shouldn't end until 2005 -- when the buyout kicks in.

The high court yesterday agreed with the farmers, ruling unanimously that cigarette makers must meet their 2004 obligations.

"Certainly the most compelling reason for rejecting the trial court's holding is that, taken to its logical extreme, it could defeat the express purpose of the Phase II Trust," wrote the North Carolina Supreme Court. The trust "was crafted to protect tobacco farmers from economic harm caused by the MSA. The Trust achieved this goal through annual distributions to the beneficiaries. These distributions were scheduled to furnish tobacco farmers a steady stream of supplemental income until at least 2010."

.....